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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re B.D. et al., Persons Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

G.D.,

Defendant and Appellant.

B213365

(Los Angeles County  
Super. Ct. No. CK74662)

APPEAL from an order of the Superior Court of Los Angeles County,  
Marilyn K. Martinez, Judge. Affirmed.

John L. Dodd & Associates and Karen J. Dodd, under appointment by the  
Court of Appeal, for Defendant and Appellant.

James M. Owens, Assistant County Counsel, Tracey F. Dodds, Principal  
Deputy County Counsel, for Plaintiff and Respondent.

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G.D. appeals from an order declaring his daughter, B.D., a dependent child of the juvenile court. G.D. contends the juvenile court erred in failing to conclude he was B.D.'s presumed father. (Fam. Code, § 7611, subd. (d).)<sup>1</sup> We conclude the juvenile court committed no error in finding G.D. did not qualify as B.D.'s presumed father and affirm the order.

### **BACKGROUND**

On August 16, 2008, police officers went to mother's home in response to reports of a fight between 11-year-old B.D. and her sister. The officers found the home cluttered and unsafe. The Department of Children and Family Services (DCFS) attempted to resolve the situation on a voluntary basis. However, mother behaved erratically and she refused to follow the case plan. At a team decision meeting on September 16, 2008, DCFS detained the children from mother and placed them with a maternal aunt.

DCFS filed a dependency petition alleging that mother physically abused B.D. and failed to take psychotropic medication as prescribed. The petition indicated G.D. is B.D.'s biological father and her alleged father.

At the detention hearing, mother informed the juvenile court that G.D. was B.D.'s father. The juvenile court noted mother had indicated G.D. holds himself out as B.D.'s father and accepted B.D. into his home. The juvenile court asked when B.D. stayed with G.D. and mother responded, "Through the grandmother. She's the homeowner and he visits over there and he used to come and see her at our house or pick her up. Not that often. But, he sees her at [paternal grandmother's home] most of the time." The juvenile court indicated it would defer a finding on paternity.

In an interview, G.D. told the children's social worker (CSW) he did not live with mother but he spent the night there occasionally. G.D. indicated he moved to California from Arkansas after high school and got "caught up in gangs." He joined

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<sup>1</sup> Subsequent unspecified statutory references are to the Family Code.

the Job Corps and moved to Utah for two years. He no longer is an active member of any gang. He reported two prior marriages and that he is currently going through his second divorce. G.D. has two children who reside in Utah with his first wife. G.D. indicated he was diagnosed with depression and schizophrenia in 1995 after his first divorce. He is currently prescribed various medications but was unable to provide contact information for his psychiatrist. G.D. voluntarily participates in group therapy and receives individual outpatient care. G.D. told the CSW his relationship with B.D. had improved and he spoke to her on the telephone regularly. G.D. currently was residing with paternal grandmother and he wanted B.D. to live with them. Regarding the allegations of the petition, G.D. said, "I can't say because I wasn't there."

Mother told the CSW that G.D. never resided with mother and his name is not on B.D.'s birth certificate. Mother indicated she and father had a casual relationship. Mother stated G.D. holds the child out to be his own and the child uses G.D.'s last name. Also, G.D. receives disability and, as G.D.'s daughter, B.D. receives disability checks in the amount of \$132 per month. DCFS recommended G.D. be declared B.D.'s presumed father.

G.D. attended the jurisdiction hearing on October 21, 2006, and counsel was appointed to represent him. G.D. filed a statement regarding parentage (JV-505) and checked one box indicating he believed himself to be B.D.'s father and another requesting entry of a judgment of parentage. G.D. did not indicate the child had lived with him but did indicate he had told relatives, friends, and co-workers that B.D. was his child. G.D. also indicated he provided financial support to the child through SSI and that B.D. visited paternal grandmother every month.

At the hearing, the juvenile court noted mother also had submitted a declaration in which she indicated, under penalty of perjury, that G.D. had openly accepted B.D. into his home. However, G.D. indicated in his declaration that he only visits the child every month. The juvenile court asked if B.D. had ever lived with G.D. and G.D. responded in the negative. However, G.D. indicated B.D. had

spent the night at his home on several occasions. The juvenile court indicated it would again defer making a determination of paternity and asked why mother had indicated G.D. had openly accepted B.D. into his home when it appears B.D. has never lived with G.D. Mother responded: "He never dis-owned her. He never said that's not my child. That's what it meant to me. That's what I took it as."

G.D.'s counsel then asked that B.D. be allowed to live with G.D. at paternal grandmother's home. The juvenile court denied the request and ordered B.D. placed in foster care with her sister. G.D. then indicated B.D. had spent the previous day and night at his home, although he had not seen her for several months before that. The juvenile court continued the matter for a contested jurisdictional hearing.

B.D.'s placement with her sister proved unsuccessful and B.D. was placed in temporary care. At a hearing on December 4, 2008, B.D. addressed the juvenile court ex parte and indicated she wished to be returned to mother. In subsequent reports, B.D. told the CSW she wished to live with G.D.

G.D. appeared for the contested jurisdiction hearing on January 9, 2009. At the hearing, B.D.'s counsel indicated the child had never resided with G.D. However, the child did visit him on occasion. When the juvenile court asked how frequently the child visited G.D.'s home, G.D. indicated B.D. visited him two or three times in 2008. When the juvenile court asked about the "last ten years," G.D. responded, "No."

The juvenile court indicated it was unable to find G.D. had openly accepted B.D. into his home based on three visits in a 12-month period and concluded G.D. was only an alleged father. The juvenile court then received evidence and sustained the petition under Welfare and Institutions Code section 300, subdivisions (a), (b) and (j).

The juvenile court ordered family reunification services for mother and ordered mother to participate in individual therapy. The juvenile court ordered no family reunification services for G.D. because he was not entitled to them as an

alleged father. The juvenile court also found G.D. “really does not have a relationship with” the child. However, the juvenile court ordered DCFS to evaluate paternal grandmother’s home for possible placement of B.D.

### **DISCUSSION**

G.D. contends the evidence that showed B.D. visited him and spent the night at his home was sufficient to show he received the child into his home. G.D. argues section 7611, subdivision (d) does not require B.D. to live with him or require that he regularly visit her. G.D. argues the juvenile court improperly rewrote the statute to require regular visitation in order to qualify as a presumed father. (*Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 381.)

G.D. notes he has requested that B.D. reside with him and the JV-505 statement he filed on October 21, 2008, reflects his belief that he is B.D.’s father. Further, he has told friends, relatives and co-workers that B.D. is his child, he has held B.D. out as his daughter and she uses his last name. Also, B.D. receives disability income from SSI based on G.D.’s mental illness. Thus, in the eyes of the United States government, B.D. is G.D.’s child. G.D. further asserts he was aware of the circumstances that led to B.D.’s dependency and thus he was more than an occasional visitor, as the juvenile court found.

G.D. asserts that, unlike fathers who reside with a mother only to take advantage of the mother’s hospitality (*In re Sarah C.* (1992) 8 Cal.App.4th 964, 973; *In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1654-1655), G.D. resided with paternal grandmother due to his disability. There was no evidence he was taking advantage of her by living at her home. Thus, receiving the child into paternal grandmother’s home for visitation was sufficient to satisfy the statute.

G.D. concludes the matter be remanded with directions to provide him family reunification services as a presumed father.

We are not persuaded that G.D. has shown entitlement to presumed father status.

In order to become a presumed father, a man must fall within one of the categories enumerated in section 7611. Under that section, “a man who has neither married nor attempted to marry the mother of his child cannot become a presumed father unless he *both* ‘receives the child into his home *and* openly holds out the child as his natural child.’ (§ 7611, subd. (d), italics added.)” (*Adoption of Michael H.* (1995) 10 Cal.4th 1043, 1051.) Constructive receipt of the child into the home is not sufficient. Rather, the child must physically be brought into the home. (*Id.*; *In re Spencer W.*, *supra*, 48 Cal.App.4th at p. 1652.) Only a presumed father is entitled to reunification services, visitation and custody rights. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 610.)

“ ‘The statutory purpose [of section 7611] is to distinguish between those fathers who have entered into some familial relationship with the mother and child and those who have not.’ [Citation.]” (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1209.) “In determining whether a man has ‘receiv[ed a] child into his home and openly h[eld] out the child’ as his own (§ 7611, subd. (d)), courts have looked to such factors as whether the man actively helped the mother in prenatal care; whether he paid pregnancy and birth expenses commensurate with his ability to do so; whether he promptly took legal action to obtain custody of the child; whether he sought to have his name placed on the birth certificate; whether and how long he cared for the child; whether there is unequivocal evidence that he had acknowledged the child; the number of people to whom he had acknowledged the child; whether he provided for the child after it no longer resided with him; whether, if the child needed public benefits, he had pursued completion of the requisite paperwork; and whether his care was merely incidental.” (*Id.* at p. 1211.)

“The presumed father’s commitment to the child is a key consideration. [Citation.]” (*In re T.R.*, *supra*, 132 Cal.App.4th at p. 1210.)

One who claims entitlement to presumed father status has the burden of establishing, by a preponderance of the evidence, the facts supporting that entitlement. (*In re A.A.* (2003) 114 Cal.App.4th 771, 782; *In re Spencer W.*, *supra*, 48 Cal.App.4th at p. 1653.) In considering a challenge to a finding a man is not a presumed father, we apply the substantial evidence test. In doing so, we view the evidence in the light most favorable to the juvenile court's determinations. We also draw all reasonable inferences, and resolve conflicts in the evidence, in favor of the juvenile court's findings, and we do not reweigh the evidence. (*In re A.A.*, *supra*, at p. 782; *In re Spencer W.*, *supra*, at p. 1650.)

Here, the record does not demonstrate that G.D. established sufficient facts to support of his claim to presumed father status. G.D. did not indicate on the paternity questionnaire that B.D. had ever lived with him. He told the juvenile court B.D. had visited his home and stayed overnight. However, the record indicates B.D. visited paternal grandmother and G.D. lived with paternal grandmother. Even assuming paternal grandmother's home is G.D.'s home, there was no evidence that G.D. had taken the opportunity of B.D.'s visits with paternal grandmother to establish a relationship with the child. Rather, G.D. admitted that, in the first 10 years of the child's life, he did not visit the child at all and, in the year 2008, he visited only two or three times.

Further, the record does not show G.D. took an active role in B.D.'s life as a parent. G.D. did not assist with her care and, although G.D. occasionally spent the night at mother's residence, there is no indication that, in doing so, he had established a father-daughter relationship with B.D. Rather, it appears this conduct by father was pursued in order to maintain his "casual relationship" with mother.

Although G.D. took steps to hold the child out as his own, he failed to receive the child physically into his home within the meaning of section 7611, subdivision (d). Consequently, the trial court's finding G.D. did not prove his status as a presumed father is supported by substantial evidence.

**DISPOSITION**

The order declaring B.D. a dependent child is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.